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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,570	07/27/2001	Wesley Wilkinson	1674/43755CO	9318

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,570

Applicant(s)

WILKINSON, WESLEY

Examiner

Christopher Bottorff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed November 21, 2002 has been entered. Claims 48-59 are added. Claims 21-59 are pending.

Claim Objections

Claim 51 is objected to because of the following informalities: claim 51 depends from canceled claim 1. However, this appears to be typographical error of claim 31. For the purposes of examination, claim 51 has been interpreted as depending from claim 31. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 21-59 are rejected under 35 U.S.C. 102(e) as being anticipated by
Fullenkamp et al. US 5,348,326.

Fullenkamp et al. discloses a trolley with a control wheel assembly having a longitudinal axis of travel and an array of four castors that are disposed at the corners of

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the trolley. See column 2, lines 3-46. The assembly includes a fixed wheel 44, and a second wheel 46, both positioned in a region where the load center of the trolley and the center of the array of castors coincide. Moreover, the principle of placing a control wheel where the load center of the trolley and the center of the array of castors coincide is well established in the art, and further examples are provided in the art of record. The fixed wheel rotates about a horizontal axis but cannot rotate about a vertical axis. Also, a biasing and damping means, in the form of a gas strut, is provided with each fixed wheel. Note column 2, lines 29-31. The biasing force of the biasing and damping means is independent of the load on the trolley and the force of the bias means does not exceed the weight of an empty trolley. The traction force requirements for a vertical position of the fixed wheel are a substantial function of a mass of the trolley. Furthermore, a lifting means is provided for lifting the fixed wheel out of contact with the ground.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd in view of the admitted prior art (Stabilus Gas Springs Technical Information).

Lloyd discloses a trolley with a control wheel assembly having a longitudinal axis of travel and an array of four castors that are disposed at the corners of the trolley (see figure 1). The assembly includes a fixed wheel 34 positioned in a region where the load center of the trolley and the center of the array of castors coincide. The fixed wheel rotates about a horizontal axis 35 but cannot rotate about a vertical axis (see figure 3 and page 4, lines 27-28). A strut assembly is provided having a first part 36 connected to a member which rotatably supports the fixed wheel at axis 35 and a second part 39 which is fixed in use to the trolley (see figure 3). Also, a biasing and damping means 43 is provided with the fixed wheel, and in that the fixed wheel and biasing and damping means are centrally located, the biasing and damping means has a castor wheel on each side. The biasing force of the biasing and damping means is independent of the load on the trolley and the force of the bias means does not exceed the weight of an empty trolley (see figure 1 and page 5, lines 1-5). Since the force of the biasing and damping means is independent of the load on the trolley, the traction force requirements for a vertical position of the fixed wheel are a substantial function of a mass of the trolley. A lifting means 48 is provided for lifting the fixed wheel out of contact with the ground (see figure 3 and page 3, lines 6-10).

In addition, providing a plurality of fixed wheels that each have a biasing and damping means represents an obvious duplication of parts and is taught by Lloyd (see page 9, lines 22-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a plurality of fixed wheels, each with damping

and biasing means, in order to improve the degree of control in the trolley. However, Lloyd lacks a self-contained gas strut.

In the interviews conducted on May 16, 2000 and August 2, 2000, Applicant admitted that the claimed self-contained gas strut was a prior art design of the type demonstrated in the interviews and described in the Stabilus Gas Springs Technical Information publication. It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the spring of Lloyd with the admitted prior art gas strut in order to provide counterbalance and force assistance to the fixed wheel. The claimed functional characteristics of the biasing and damping means (i.e.: the biasing force being independent of the load on the trolley, not exceed the weight of an empty trolley, and the traction force requirements for a vertical position of the fixed wheel being a substantial function of a mass of the trolley) are also true in this combined system.

Response to Arguments

Applicant's arguments filed November 21, 2002 have been fully considered but they are not persuasive.

In regard to Fullenkamp et al., Applicant emphasizes that the present invention involves a light trolley and that constant force is necessary for the control wheel. However, these arguments are not relevant since the weight of the trolley and the constant force requirement are not claimed. Although the claims are interpreted in light

of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Moreover, the gas strut of Fullenkamp et al. applies a constant force of preferably 400 Newtons. See column 5, line 33. Although a gas strut may be selected that applies a force within the range of 300-500 newtons, the force should be a single value within this range. The preference for one value, 400 newtons, strongly suggests that the force applied is constant at that value and not fluctuating within the range.

On page 5, lines 10-12, of the remarks, Applicant suggests that the swing arm mechanism of Fullenkamp et al. is not a fixed wheel. The examiner respectfully disagrees. On page 4, lines 19-20, of the remarks Applicant concedes that Fullenkamp et al. discloses a mechanism that provides a fixed or control wheel. The claims do not define the fixed wheel in any way that would exclude a swing arm mechanism. Furthermore, the wheel mechanism of Fullenkamp et al. is "fixed" in as much as the claimed wheel mechanism is "fixed."

In regard to the combination of Lloyd and the admitted prior art, the references to constant force and trolley weight are again irrelevant since these features are not claimed. In addition, the supermarket trolley of Lloyd is likely to be lighter in weight than the trolley that Applicant demonstrated to the examiner.

Also, Applicant continues to assert that combining the gas strut of the prior art with the trolley of Lloyd would not be obvious. However, the examiner still disagrees. Compression springs and gas springs are obvious equivalents within the family of springs. The mechanism of Lloyd requires a component that will perform a spring

function. Both a compression spring and a gas spring provide such a function. Therefore, they are obvious equivalents for the purposes of Lloyd. The additional functional characteristics (i.e.: constant force) of a gas strut would not dissuade one of ordinary skill in the art from exchanging a compression spring for a gas spring, but would encourage such a modification.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Christopher Bottorff
January 24, 2003


BRIAN L. JOHNSON
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1/24/03